

Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 069287

O R 211742Z OCT 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 3773

INFO USMISSION USBERLIN

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EXDIS

E.O. 11652: N/A

TAGS: PGOV GW WB

SUBJECT: SENATE SELECT COMMITTEE REQUEST FOR INFORMATION

REFS: (A) STATE 248453; (B) STATE 239423

1. AS REQUESTED IN PARA 7, REF (B), OCA HAS PREPARED AN UNCLASSIFIED BRIEFING PAPER ON OPERATIONS OF THE G-10 LAW IN THE FRG. THE PAPER, THE TEXT OF WHICH FOLLOWS, HAS RECEIVED THE CONCURRENCE OF THE FEDERAL MINISTRY OF THE INTERIOR FOR USE AS REQUIRED WITH THE STAFF OF THE SELECT COMMITTEE ON AN UNCLASSIFIED BASIS.

2. BEGIN TEXT.

US MILITARY FORCES ARE STATIONED IN EUROPE PURSUANT TO AGREEMENTS BETWEEN THE US AND ITS ALLIES IN THE NATO. THE COLLECTION OF INTELLIGENCE CONCERNING ACTIVITIES DIRECTED AGAINST THE SECURITY AND READINESS OF US FORCES IN THE FRG IS NECESSARY AND PROPER FOR THE PRESERVATION OF THE READINESS AND SECURITY OF THESE TROOPS. ARTICLE 3 OF THE SUPPLEMENTARY AGREEMENT, OF 3 AUGUST 1959, TO THE NATO SOFA, DATE 19 JUNE 1951, PROVIDES FOR CLOSE COOPERATION BETWEEN THE GERMAN AUTHORITIES AND THE AUTHORITIES OF THE FORCES. THE LIMITED OFFICIAL USE

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COOPERATION PROVIDED SHALL EXTEND IN PARTICULAR TO THE

FURTHERANCE AND SAFEGUARDING OF THE SECURITY, AS WELL AS TO THE PROTECTION OF THE PROPERTY OF THE FEDERAL REPUBLIC, OF THE SENDING STATES AND OF THE FORCES AND ESPECIALLY TO THE COLLECTION, EXCHANGE AND PROTECTION OF ALL INFORMATION WHICH IS OF SIGNIFICANCE FOR THESE PURPOSES.

A NOTE VERBALE FROM THE AMERICAN EMBASSY, BONN, DATED 25 MAY 1968, REFERS TO THE CONSULTATIONS THAT TOOK PLACE BETWEEN THE EMBASSIES OF THE THREE POWERS AND THE FRG CONCERNING THE "SEVENTEENTH LAW TO SUPPLEMENT THE BASIC LAW" AND THE "LAW RESTRICTING THE SECRECY OF MAIL AND TELECOMMUNICATIONS." THE NOTE CONFIRMED THE LAPSE OF RESERVE POWERS ONCE THE FRG TAKES EFFECTIVE LEGISLATIVE ACTION IN THE FIELD OF MONITORING MAIL AND TELECOMMUNICATIONS; TO PROTECT THE SECURITY OF THE US ARMED FORCES STATIONED IN THE FRG.

THE G-10 LAW (THE LAW RESTRICTING THE SECRECY OF MAIL AND TELECOMMUNICATIONS) MEETING THESE REQUIREMENTS WAS PASSED IN AUGUST 1968. PURSUANT TO INTERNATIONAL AGREEMENTS (STATUS OF FORCES AGREEMENT, AND THE SUPPLEMENTARY AGREEMENT THERETO) THE FRG MADE IT POSSIBLE FOR ALLIED POWERS, WHOSE FORCES ARE STATIONED IN WEST GERMANY TO SUGGEST TO THE DESIGNATED FRG AGENCY THAT IT CONSIDER CARRYING OUT A SPECIFIC INTERCEPT ACTIVITY. IF THIS AGENCY AGREES AND REQUESTS AUTHORITY FROM THE MINISTRY OF THE INTERIOR, IT WILL ULTIMATELY SHARE WITH THE ALLIED POWER HAVING MADE THE SUGGESTION THE INFORMATION OBTAINED WHICH IS OF IMPORTANCE TO ITS SECURITY NEEDS.

ARTICLE 1, SECTION 1(1), OF THE G-10 LAW PROVIDES THE BASIS FOR ALLIED RIGHTS:

IN ORDER TO AVERT DANGERS THREATENING THE FREE DEMOCRATIC BASIC ORDER OR THE EXISTENCE OR SECURITY OF THE FEDERATION OR OF ONE OF ITS LAENDER, INCLUDING THE SECURITY OF THE FORCES OF THE NON-GERMAN CONTRACTING STATES OF THE NORTH ATLANTIC TREATY STATIONED IN THE FEDERAL REPUBLIC OF GERMANY OR OF THE FORCES OF ONE OF LIMITED OFFICIAL USE

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THE THREE POWERS PRESENT IN LAND BERLIN, THE FEDERAL AND LAND OFFICES FOR THE PROTECTION OF THE CONSTITUTION, THE ARMED FORCES SECURITY OFFICE AND THE FEDERAL INTELLIGENCE AGENCY SHALL HAVE THE AUTHORITY TO OPEN AND INSPECT MESSAGES WHICH ENJOY THE PROTECTION OF PRIVACY OF MAILS, TELEPHONE AND TELEGRAPHIC COMMUNICATIONS, AS WELL AS TO MONITOR TELEPRINTER TRAFFIC AND TO MONITOR AND MAKE RECORDINGS OF TELEPHONE CONVERSATIONS.

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ARTICLE 1, SECTION 2 (1)5, PROVIDES THAT RESTRICTIVE MEASURES PURSUANT TO SECTION 1 MAY BE ORDERED IF THERE ARE FACTUAL INDICATORS WHICH JUSTIFY THE SUSPICION THAT A CERTAIN INDIVIDUAL PLANS, COMMITS, OR HAS COMMITTED CRIMINAL ACTS AGAINST THE SECURITY OF THE ALLIED FORCES STATIONED IN THE FRG. PARAGRAPHS OF THE FRG PENAL CODE UNDER WHICH AN APPLICATION MAY BE LEVIED ARE SPECIFICALLY CONTAINED IN THIS SUBPARAGRAPH.

IN THE FEDERAL REPUBLIC OF GERMANY, THE US AUTHORITIES ARE NOT RESPONSIBLE FOR AND DO NOT PARTICIPATE IN ANY MANNER IN THE TECHNICAL ASPECTS OF INTERCEPT ACTIVITIES. US SUGGESTIONS TO THE GERMAN AUTHORITIES FOR INTERCEPTION ACTIVITY WILL NOT BE APPROVED UNLESS THERE IS EVIDENCE OF CRIMINAL CONDUCT VIOLATING WEST GERMAN LAW. SUCH SUGGESTIONS ARE SUBMITTED TO THE APPROPRIATE GERMAN AGENCY WHERE THEY ARE CAREFULLY REVIEWED. THIS REVIEW PROCEDURE INVOLVES SEVERAL GOVERNMENT ECHELONS TO INCLUDE THE MINISTER OF INTERIOR WHO AUTHORIZES THAT THE INTERCEPT ACTIVITY BE CONDUCTED. HOWEVER, HIS AUTHORIZATION IS REVIEWED SUBSEQUENTLY BY A THREE MAN PARLIAMENTARY COMMISSION, WHICH MEETS AT LEAST ONCE A MONTH; IT CONSISTS OF A "CHAIRMAN QUALIFIED TO HOLD JUDICIAL OFFICE AND TWO ASSESSORS"

ALL OF WHOM THE LAW FURTHER PROVIDES "SHALL BE INDEPENDENT WITH RESPECT TO THE PERFORMANCE OF THEIR FUNCTIONS LIMITED OFFICIAL USE

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AND NEED NOT ACT UNDER INSTRUCTIONS." THE PARLIAMENTARY COMMISSION IS APPOINTED IN TURN BY A PANEL "COMPOSED OF FIVE DEPUTIES DESIGNATED BY THE BUNDESTAG" WHOM THE FEDERAL MINISTER MUST ALSO KEEP INFORMED AT LEAST EVERY SIX MONTHS ABOUT THE IMPLEMENTATION OF THE LAW. IF THE PARLIAMENTARY COMMISSION DECLARES AN INTERCEPT ORDER TO BE UNNECESSARY, THE FEDERAL MINISTER MUST REPEAL IT. THE INTERCEPT ORDER CAN BE RENEWED FOR A FURTHER THREE MONTH PERIOD, IF CIRCUMSTANCES JUSTIFYING THE ORDER CONTINUE TO PREVAIL. ALL LEVELS OF REVIEW AS MENTIONED ABOVE ARE AGAIN INVOLVED.

IN ADDITION TO SUBMITTING SUGGESTIONS IN ACCORDANCE WITH ARTICLE 1, SECTION 2(1)5, THE US FORCES SHARE IN THE RECEIPT OF MATERIAL OBTAINED BY A GERMAN AGENCY ON THE BASIS OF ARTICLE 1, SECTION 3(1). THE PURPOSE OF THIS MATERIAL IS TO GATHER INFORMATION FROM EAST BLOC COUNTRIES CONCERNING THE IMMINENCE OF HOSTILITIES.

DURING THE EARLY PERIOD OF THE G-10 PROGRAM A CONSIDERABLE NUMBER OF SUGGESTIONS WERE DISAPPROVED BY GERMAN AUTHORITIES. CURRENTLY, SINCE THE ALLIES ARE MORE FULLY COGNIZANT AND UNDERSTAND THE REQUIREMENTS, PROCEDURES, AND RESTRICTIONS OF THE G-10 LAW BETTER, FEW DISAPPROVALS ARE EXPERIENCED.

A NOTE VERBALE FROM THE GERMAN FOREIGN OFFICE, DATED 24 MAY 1974, RECONFIRMS THE OBLIGATION FOR CLOSE COORDINATION IN ORDER TO INSURE MUTUAL SUPPORT, AS OUTLINED IN ARTICLE 3 OF THE SUPPLEMENTARY AGREEMENT OF 19 JUNE 1951. THE NOTE VERBALE CONTAINS A DECLARATION DEALING WITH THE COOPERATION BETWEEN GERMAN AUTHORITIES AND THE AUTHORITIES OF THE UNITED STATES STATIONING FORCES WITHIN THE FRAMEWORK OF ARTICLE 3 OF THE SUPPLEMENTARY AGREEMENT TO THE NATO STATUS OF FORCES AGREEMENT.

THE GERMAN STATE SECRETARIES COMMITTEE ON INTELLIGENCE, WHICH MET ON AT LEAST TWO OCCASIONS IN THE PAST TWO YEARS IN ORDER TO EXAMINE ACCUSATIONS LIMITED OFFICIAL USE

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AGAINST US AUTHORITIES THAT THEY HAD ENGAGED IN ILLEGAL
INTERCEPT ACTIVITIES, CONCLUDED ITS INVESTIGATIONS IN
BOTH INSTANCES WITH STATEMENTS THAT THESE ACCUSATIONS
WERE UNFOUNDED. END TEXT.
HILLENBRAND

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